IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO.920/2006
(Dharmendra Puri & Ors. Vs. State of Rajasthan & Anr)

Date of Order : 26/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. R.S.Chundawat for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 4.7.2006 passed by Additional Sessions Judge (Fast Track) No.1, Bhilwara (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioners against the order dated 28.3.2005 passed by Judicial Magistrate No.2, Bhilwara (for short 'the trial court' hereinafter) was dismissed.

I have heard learned counsel for the petitioners and public prosecutor for the State. No one appears for the non-petitioner No.2 complainant though served.

It is contended by learned counsel for the petitioners that Smt. Krishna married to Dharmendra Puri petitioner No.1 in the year 1999. Since 06.06.2000, Smt. Krishna had been living at her parents' house and was not living with the present petitioners. Even according to the complainant, Krishna came to the complainant on 6.6.2000 and since then, till her death on 2.1.2004, she continued to live with her parents' house. Krishna, according to the complaint, died of Ulcer Colitis at her parental house. Thereafter, the non-petitioner lodged a report for the offences under Sections 498-A and 406 IPC. The matter was sent to the police and after investigation police filed challan. The trial court took the cognizance of the offence vide order dated 28.3.2005. That order came to the challenged by the petitioners before the revisional court and the revisional court dismissed the revision petition.

It is contended by learned counsel for the petitioners that there is absolutely no allegation of harassment or subjecting the deceased to cruelty by the present petitioners as in her life time, the deceased had never alleged that she was subjected to cruelty or harassment by the present petitioners.

The complaint has been filed after the death of Krishna. There is no allegation of Krishna that she was subjected

to harassment or cruelty in connection with demand of dowry. The very essential ingredients for the offence under Section 498A IPC are not made out from the averments made in the complaint as also statement of witnesses. Admittedly, Krishna died because she was suffering from Ulcer Colitis. There had been a divorce petition by the petitioner No.1 against her wife Krishna since deceased. At any rate, admitted case of the complainant is that Krishna had not been living with the petitioners since 6.6.2000 and after about three and half years she alleged to have expired at her parental house because of ailment i.e. Ulcer Colitis.

So far as the offence under Section 406 IPC is concerned, there is no allegation of criminal breach of trust. The deceased in her life time never alleged that any of her jewellery which alleged to have been entrusted to the petitioner have been misappropriated. The complainant alleged that certain dowry articles which were given to the deceased and thereafter it became her Stridhan. Even if there is misappropriate or criminal breach of trust by the petitioners then it is for the deceased to allege and the deceased during her life time never alleged that there had been any criminal breach of trust with regard to her Stridhan property.

Learned public prosecutor supported the order impugned.

I have given my thoughtful consideration to the rival submissions made by the counsel for the parties.

To construe an offence under Section 498A IPC, it must be established that cruelty or harassment to wife was to force her to cause bodily injury to herself or to commit suicide or the harassment was to compel her to fulfill the illegal demand for dowry. In the instant case, the wife of the petitioner No.1, in her life time, has not alleged that she was subjected to cruelty or harassment by the present petitioners in connection with demand of dowry.

Section 498-A IPC provides that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation (b) to Section 498-A IPC provides that harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet

such demand.

The deceased in her life time has never alleged that she was subjected to harassment or cruelty to meet any unlawful demand for any property or valuable security. Even otherwise, had there been any harassment or cruelty to her, then it should have been alleged by her soon after her going from in-law's house i.e. on 6.6.2000. She in her life time for more than seven and half years did not come with any case of cruelty or harassment. In my view, the trial court fell in error in taking cognizance of the offence. From the material available on record, the essential ingredients for the offence under Section 498-A IPC are not made out.

So far as offence under Section 406 IPC is concerned, the deceased in her life time never alleged that she entrusted the property i.e. Stridhan to the petitioners and on demand they failed to return the same. In the circumstances, therefore, the essential ingredients for the offence under Section 406 IPC are also not made out.

Having regard to the facts and circumstances of the case, in my view, both the courts below failed to take into account that the very essential ingredients for the offences under

Sections 498-A and 406 IPC are not made out from the material available on record, yet proceeded to take cognizance and issued the process. In the circumstances, therefore, to allow the proceedings against the present petitioners and the orders impugned would be nothing but abuse of the process of the Court. Therefore, to secure the ends of justice, the order impugned dated 4.7.2006 passed by the revisional court and the order 28.3.2005 passed by the trial court deserve to be set aside.

In the result, the petition is allowed. The order passed by the trial court dated 28.3.2005 and the order passed by the revisional court dated 4.7.2006 affirming the order passed by the trial court, are set aside. The proceedings against the present petitioners stand quashed.

(H.R.PANWAR),J.

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